

**UNITED STATES BANKRUPTCY COURT
DISTRICT OF VERMONT**

IN RE:)
JAMES T. THEODORE, individually)
and d/b/a JTT Properties, J.T.)
THEODORE, INC.)
Debtors.)
)

)) Chapter 11 Case
10-10233
Jointly Administered

**DEBTORS' APPLICATION FOR ORDER UNDER 11 U.S.C. § 327 (a) 329, FED.
R. BANKR. P. 2014(a) AND VT. LBR 2014-1 AUTHORIZING EMPLOYMENT AND
RETENTION OF KENLAN, SCHWIEBERT, FACEY & GOSS, P.C.
AS BANKRUPTCY COUNSEL TO DEBTORS-IN-POSSESSION
NUNC PRO TUNC TO COMMENCEMENT DATE**

James T. Theodore, individually and doing business at JTT Properties, and J.T. Theodore, Inc., Debtors-in-possession, in the above-captioned jointly administered case (collectively, the “Debtors”), hereby applies for an Order under 11 U.S.C. §§ 327(a) and 329, Fed. R. Bankr. P. 2014(a) and VT. LBR 2014-1 Authorizing the Employment and Retention of Kenlan, Schwiebert, Facey & Goss, P.C. as bankruptcy counsel, effective as of the date of commencement of this case (the “Application”). In support of this Application, the Debtors rely on the separately filed Declaration of Heather Z. Cooper in Support of Debtors’ Application for Order Pursuant to 11 U.S.C. §§ 327(a) and 329 Fed. R. Bankr. P. 2014(a) and VT. LBR 2014-1 Authorizing the Employment and Retention of Kenlan, Schwiebert, Facey & Goss, P.C. as bankruptcy counsel as of the Commencement Date (the “Declaration”), which incorporated herein by reference and respectfully represents as follows:

KENLAN
SCHWIEBERT
FACEY
& GOSS, P.C.
P.O. BOX 578
RUTLAND, VT
05702-0578
(802) 773-3300

JURISDICTION AND VENUE

1. The Court has jurisdiction to consider this motion pursuant to 28 U.S.C. §§157 and 1334. This is a core proceeding under 28 U.S.C §157(b).

2. Venue of these cases and this motion in this district is proper under 28 U.S.C. §§1408 and 1409.

BACKGROUND

3. On February 25, 2010 (the “Commencement Date”) the Debtors voluntarily commenced these Chapter 11 proceedings under the United States Bankruptcy Code. The factual background regarding the Debtors and the events leading to the filing of these chapter 11 cases are set forth in detail in the Vt. LBR 1007 Affidavit as filed with the Court on the Commencement Date.

4. The Debtors continue to operate and maintain their property as Debtors in possession in accordance with Bankruptcy Code §§ 1107 and 1108.

RELIEF REQUESTED

5. By this Application, the Debtors seek entry of an Order under §§327(a) and 329 of the Bankruptcy Code, Rule 2014(a) of the Bankruptcy Rules and Rule 2014-1 of the Local Rules, authorizing the employment and retention of Kenlan, Schwiebert, Facey & Goss, P.C. (the “Firm”) effective as of the Commencement Date for the purpose of providing bankruptcy counsel services in this chapter 11 case, all in accordance with the terms of the engagement letter executed February 18, 2010, between the Debtors and the Firm (the “Engagement Letter”), a copy of which is attached hereto as Exhibit A.

BASIS FOR RELIEF

6. The Debtors wish to retain and employ the Firm to represent the Debtors as counsel in this proceeding. The attorneys primarily responsible for this matter are Rodney McPhee, Esq. and Heather Z. Cooper, Esq. Each is a duly licensed attorney at law and a member of the bar of this Court, and experienced in bankruptcy matters. The office address is PO Box 578, 71 Allen Street, Rutland, Vermont, 05701, with a phone number of 802-773-3300.

- a. Rodney E. McPhee is the chair of the Firm's litigation department and has extensive litigation experience, including bankruptcy related litigation. The Firm has handled various aspects of previous chapter 11 proceedings in the District of Vermont and its attorneys are familiar with the local practices regarding the management of a chapter 11 case.
- b. Heather Z. Cooper has previously worked on numerous Chapter 11 and out-of-Court restructurings, advising both debtors and creditors in various cases, with extensive experience working with companies in distress situations, both during her affiliation with the Firm and by previous employment.
- c. For all of the foregoing reasons, the Debtors believe that the Firm is well qualified and able to represent the Debtors in a cost-effective, efficient and timely manner.

SERVICES TO BE RENDERED

7. The parties have entered into the Engagement Letter, which governs the relationship between the Firm and the Debtors with respect to the case under chapter 11 and the need for Court approval of certain additional services. The Firm will provide such professional counseling services (the "Services") as the Firm and the Debtors shall deem appropriate and

feasible in order to advise the Debtors as counsel in the course of the chapter 11 case. The Firm will advise the Debtors as to local procedures, advise substantively on motions and strategies where appropriate and prepare, review and file pleadings with the Court, and attending Court hearings. The Firm will advise the Debtors as to their duties and operations as Debtors-in-possession, will take all actions necessary to preserve the estate, prepare all necessary motions and other papers in the ordinary administration of the estate and assist in the formulation, negotiation and confirmation of the Plan. The Firm will perform any and all other legal services for the Debtors that the Debtors determine are necessary and appropriate after advice and consultation.

8. The Debtors believe that the Firm is well qualified and is able to provide the services to the Debtors. The Firm has indicated a willingness to act on behalf of the Debtors, on the terms described above and to subject itself to the jurisdiction of this Court. Additionally, the Debtors have been advised by the Firm that it will endeavor to coordinate with any other retained professionals in this Bankruptcy case to eliminate unnecessary duplication or overlap of work.

PROFESSIONAL COMPENSATION

9. As more fully described in the Engagement Letter, the Debtors have agreed, subject to Court approval, to pay the fees and expenses for the services rendered in these cases as follows:

- a. The Firm will be provided compensation at its current hourly rate as follows:
Rodney E. McPhee - \$220.00
Heather Z. Cooper - \$175.00
Paralegals - \$75.00
- b. The Firm has received a pre-petition retainer, against which time and expenses will be billed on a periodic basis, based upon the rate sited above. Expenses will also be charged, as further described in the Engagement Letter.
- c. The applications to the Court may be made on a periodic basis, allowing the Firm to draw against its retainer or otherwise receive payment as approved by the Court.

- d. The overall compensation structure described above is consistent and typical of arrangements entered into by the Firm and other firms with respect to rendering similar services for clients, such as the Debtors.
- e. In addition, given the numerous issues which the Firm may be required to address in the performance of its services hereunder, the Firm's commitment to the variable time and effort necessary to address all such issues as they arise, and the market prices for the Firm's services for engagements of this nature in an out-of-Court context, as well as in chapter 11, the Debtors agree that the fee arrangements in the Engagement Letter are reasonable.
- f. As set forth in the Declaration, the Firm has not shared or agreed to share any of its compensations from the Debtors with any other persons other than managing directors, professionals or other employees of the Firm, as permitted by §504 of the Bankruptcy Code.
- g. The Debtors wish to continue to employ and retain the Firm post-petition on the same terms and conditions as those set forth in the Engagement Letter, which the Debtors believe to be reasonable based on the customary compensation charged by comparably skilled practitioners in cases under Chapter 11.

DISINTERESTEDNESS OF THE FIRM

10. As more particularly described in the Declaration, the Firm has conducted a conflict check and due inquiry regarding its relations with the Debtors and as identified to the Firm, with the Debtors' significant creditors and other material parties and interest, and the office of the United States Trustee, to determine whether the Firm has any conflicts or other relationships that might bear on its retention.

11. Based upon such conflict check and due inquiry, the Firm has advised the Debtors that neither the Firm nor any professional employee of the Firm has any connection with or holds any interest adverse to the Debtors, their significant creditors or other material parties in interest or the office of the United States Trustee, in the matters for which the Firm has proposed to be retained, except as disclosed in the Declaration. The Firm is not a creditor of the Debtors.

12. To the best of the Debtors' knowledge, information and belief and in reliance on the Firm's declaration, the Firm is a "disinterested person" as such term is defined in §101(14) of the Bankruptcy Code and as required under §327(a) of the Bankruptcy Code.

13. The Debtors submit that the appointment of the Firm on the terms and conditions set forth herein is in the best interest of the Debtors, their creditors and all parties in interest.

NOTICE

14. Notice of this Application has been provided to the office of the United States Trustee in accordance with Rule 2014-1(b) of the Local Rules. Additional noticing will be provided if and to the extent directed by the Court pursuant to such rule.

NO PRIOR REQUEST

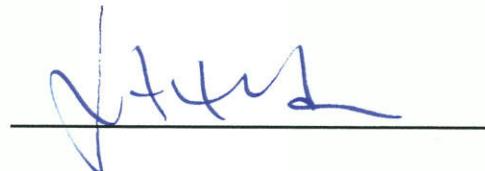
15. No prior application for the relief requested herein has been made to this or any other Court.

WHEREFORE, the Debtors respectfully request that the Court enter an Order

- (1) Authorizing the Debtors to employ and retain Kenlan, Schwiebert, Facey & Goss P.C. as their bankruptcy counsel pursuant to the terms of the Engagement Letter, effective as of the Commencement Date, as described herein; and
- (2) Granting the Debtors such other and further relief as is just and proper.

Dated at Rutland, Vermont, this 5th day of March, 2010.

**JAMES T. THEODORE, individually
and as authorized agent for JTT Properties and
J.T. Theodore, Inc.**



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